



# Flathead County

## Planning & Zoning

1035 1<sup>st</sup> Ave W, Kalispell, MT 59901  
Telephone 406.751.8200 Fax 406.751.8210

RECEIVED

AUG 16 2013

FLATHEAD COUNTY  
PLANNING & ZONING OFFICE

### **CONDITIONAL USE PERMIT APPLICATION<sup>1</sup>**

*Submit this application, all required information, and appropriate fee (see current fee schedule)  
to the Planning & Zoning office at the address listed above.*

**FEE ATTACHED \$ 700.00**

#### **PROPOSED USE (as described in the Flathead County Zoning Regulations):**

The proposed use is a water ski/wakeboard use for the lakes approved in the Rosewater PUD and Preliminary Plat. The Flathead County Commissioners conditioned the Rosewater PUD approval to require a Conditional Use Permit for the Water Ski/Wakeboarding use.

#### **OWNER(S) OF RECORD:**

Name: Score Management, LLC. Attn: Bill Tanner Phone: (406) 250-4482

Mailing Address: 688 Echo Lake Road

City, State, Zip Code: Bigfork, MT 59911

Email: \_\_\_\_\_

#### **PERSON(S) AUTHORIZED TO REPRESENT THE OWNER(S) AND TO WHOM ALL CORRESPONDENCE IS TO BE SENT:**

Name: Sands Surveying, Inc. (Eric H. Mulcahy, AICP) Phone: (406) 755-6481

Mailing Address: 2 Village Loop

City, State, Zip Code: Kalispell, MT 59901

Email: eric@sandssurveying.com

#### **LEGAL DESCRIPTION OF PROPERTY (Refer to Property Records):**

Street

Address: 1535 Rose Crossing S 20 T 29 R 21

Subdivision \_\_\_\_\_ Tract \_\_\_\_\_ Lot \_\_\_\_\_ Block \_\_\_\_\_

Name: N/A No(s). 1, 1A, and 9A No(s). \_\_\_\_\_ No. \_\_\_\_\_

1. **Zoning District and Zoning Classification in which use is proposed (EXAMPLE: Bigfork Zoning District, SAG-5 zoning classification):**

Highway 93 North Zoning District. The property is zoned SAG-5/PUD

2. **Explain how the proposed use meets all of the required criteria below. ALL CRITERIA MUST BE DISCUSSED. If criteria are not applicable, please explain why. Attach drawings, additional text, site plans, and any other documents that will assist staff in reviewing the proposed use. The more information you can provide, the easier it is for staff to review the application. Please discuss:**

<sup>1</sup> Revised: 06/24/10

**A. Site Suitability.**

The site is suitable for the use. This includes:

- (1) adequate usable space

The Rosewater PUD and Preliminary Plat went through a lengthy approval process with three public hearings in front of the Flathead County Planning Board (one for the PUD and two for the subdivision) a Public Hearing in front of the County Commissioners for the PUD and two meeting with the Commissioners for the Preliminary Plat. Ultimately both applications were approved which sets the density and layout for the Rosewater development. The final PUD plan was approved by the County Commissioners on July 31<sup>st</sup>, 2013. (See PUD Plan and Map) The requested CUP is limited to the use of the lakes and not the lakes themselves. As such, the lakes have been designed to meet the specifications of the American Water Ski Association for safe water skiing. There is adequate space within the lakes for the proposed waterski/wakeboard use. In addition, the lakes are designed to fit with the middle of the 154 acre property owned by the applicant. The nearest off-site existing home to the lake features is 800 feet away, almost three football fields. (See Sound Map with distances)

- (2) adequate access

The Rosewater Subdivision has access from Rose Crossing a paved, county maintained road. The internal subdivision roads will be paved and constructed to County Standards. A boat ramp and parking area are designed around the club house facility which allows homeowners of the subdivision to safely launch and retrieve boats from the lake.

- (3) absence of environmental constraints

A geotech analysis, shallow and deep aquifer groundwater monitoring, and non-degradation analysis, were conducted to determine if environmental constraints existed on the site. All environmental issues regarding the lake maintenance, wastewater treatment, stormwater treatment, water supply, etc were vetted by the Planning Board and County Commissioners through the review and approval of the Rosewater PUD and Subdivision. The only issue that was left for consideration with this CUP application is noise and the potential impact noise the water ski boats may have on neighboring residential uses.

**B. Appropriateness of Design.**

The site plan for the proposed use will provide the most convenient and functional use of lot. Consideration of design should include:

- (1) parking scheme

The proposed water ski lake is private in all respects. Only property owners and their guests within the subdivision will have use of the Lake for water ski/wakeboarding. As such each property owner will have parking on their lot. In addition, the proposed club house at the southwest end of the lake proposes a parking area for the residents and guests using any of the recreational elements of the development. The limited use and ample parking should adequately address the issue.

- (2) traffic circulation



As part of the subdivision review process for Rosewater, a Traffic Impact Study was prepared and presented with the application. The 58 lot subdivision is projected to produce 510 vehicle trips per day on average (255 leaving and 255 entering). As the water ski use is an amenity of the subdivision lot owners, it is not anticipated to generate its own traffic on the adjacent county road. In addition, the TIS did not show a need for any improvements to the affected public roads as a result of the Rosewater traffic.

- (3) open space

The proposed water ski/wakeboarding use is located in a large open space/common space of the proposed Rosewater development. Of the 154 acres within the development 64 acres is dedicated as open space and the lake will comprise 27 acres for a total of 91 acres of common area (land and water) or 59% of the property. The proposed CUP will allow the lake to be used for its designed purpose.

- (4) fencing, screening

The lake will not be fenced although the subdivision will be gated. Excavated soil to create the lake will be used as fill for the surrounding lots and for a portion of the road in the southeast corner. This will result in having a berm around the lake approximately 4 feet higher than the high water level of the lake. This, along with the houses and landscaping, will screen the lake and will provide for some level of sound attenuation.

- (5) landscaping

As the water ski lake will be surrounded by residential lots, the lake will have a substantial amount of landscaping buffering it from neighboring properties.

- (6) signage

There will be no signage associated with the water ski lake. There most likely will be a subdivision entrance sign that complies with the County Zoning Regulations but nothing advertising the water ski lake.

- (7) lighting

No outdoor lighting is proposed for the lake or the water ski/wakeboard use. There will not be street lights in the subdivision but lot owners may have porch lights as is typical of all residential uses including those of neighboring properties.

#### **C. Availability of Public Services and Facilities**

The following services and facilities are to be available and adequate to serve the needs of the use as designed and proposed:

- (1) sewer

The lake itself will not generate wastewater that requires treatment and disposal; however, restroom facilities will be provided in the clubhouse and each residence of the subdivision will have restroom facilities. Wastewater from those facilities will be treated and disposed in one of the proposed on-site Level 2 wastewater treatment systems. Information for these Level 2 treatment systems was provided to the Flathead County Planning Board and the Flathead County Commissioners for their review and approval of the PUD and Preliminary Plat of Rosewater.

- (2) water

Both domestic water for residential use and river water for the lake were reviewed and approved through the PUD and preliminary plat process. The applicant has water rights for irrigation which will be changed for the lake use and the developer has been in contact with Evergreen Water District for domestic water use.

- (3) storm water drainage

Preliminary Stormwater Drainage Plans were provided with the applications for the Rosewater PUD and Preliminary Plat which were in turn approved by the Planning Board and County Commissioners. Prior to final plat of the development, the applicant will need to provide final engineering and secure approval from the Flathead City County Health Department and the Montana Department of Environmental Quality for all stormwater drainage improvements.

- (4) fire protection

The use of the Lake for water skiing/wake boarding will not create a fire risk for the project. The Rosewater development is in the West Valley Fire District and the Fire District commented on the subdivision proposal stating that they were satisfied with the proposed fire hydrant layout and access into and out of the subdivision. Water for fire protection purposes will come from an extension of the Evergreen Water & Sewer District's public water supply system.

- (5) police protection

The use of the private lake for water skiing and wakeboarding is not expected to generate any calls to the Flathead County Sheriffs Office.

- (6) streets

The roads within the proposed Rosewater Subdivision will be constructed to County standards as conditioned in the Preliminary Plat approval. The standards address width, base, and paving requirements of the roads. The subdivision will have good access.

**D. Immediate Neighborhood Impact**

The proposed use will not be detrimental to surrounding neighborhoods in general. Typical negative impacts which extend beyond the proposed site include:

- (1) excessive traffic generation

As written previously, the proposed water ski /wakeboard use of the lake will not, in and of itself, generate much traffic. The Rosewater development will be gated and the use of the lake is limited to property owners of the subdivision. The applicant is requesting the ability to hold up to three water ski events a year which would allow qualified water skiers to come and compete at the lake as guests of the subdivision. Typically these events draw 20 to 30 competitors. All parking a would be accommodated on site with very little impact to the County road system.

- (2) noise or vibration

Noise is the primary reason the County Commissioners amended the PUD to require a CUP for proposed water ski and wakeboard use of the lake. To mitigate potential noise



issues, a number of steps were taken with the design of the lake and management of the water ski use.

First, the lake is situated on the 154 acre property so that the closest neighbor is 800 feet from the nearest ski boat lane of the lake. Separation by distance is one of the best mitigations for noise. To illustrate the effect on decibel (dB) readings, Carver Engineer prepared a decibel contour map which shows that noise dissipates at a measurable rate with distance. Sound level drop over distance can be calculated using the following formula:

$SPL2 = SPL1 - 20 \times \log_{10} (D2/D1)$ , where:

SPL1 is the Sound Pressure Level at the source

SPL2 is the Sound Pressure Level a person hears at some distance from the source

D1 is the standard or specified distance from the source

D2 is the distance to the person hearing the sound.

All towboats using the Lake will be required to meet certification standards of the American Water Ski Association (AWSA) for sound, acceleration, maneuverability, etc. The AWSA requirement for sound is a maximum of 75 dB at a distance of 125 ft. from the centerline of a slalom course. The Rosewater Sound Level Contour Map was prepared using this AWSA sound level requirement and the formula above.

It should be noted that this formula does not take into account berms, houses or landscaping that will buffer noise as it leaves the lake.

Second, the lake is designed so that the water level is at least four feet below the surrounding land at a distance of approximately 50 feet from the water's edge. With the elevated lots and roadway, along with the houses and associated landscaping, noise produced by the water ski tow boats will be further reduced.

Third, the applicant has prepared an Operation and Maintenance Manual (O & M) that is conditioned to subdivision approval for the project. This O & M Manual (Page 5) specifies the type of watercraft allowed on the Lake. As mentioned above, the American Water Ski Association (AWSA) restricts towboats to a maximum sound level of 75dB at a distance of 125 feet from the centerline of a slalom course. The width of each Rosewater lake or slalom course will be 220 ft. so the centerline will be 110 ft. from the respective shoreline. Therefore, at a distance 15 ft. from the shorelines, the maximum sound level will be 75 dB. This low sound level is achieved by the use of inboard motors, mufflers, and exhaust discharge below water level.

At the Planning Board meeting of May 8, 2013, we provided this same material to the Planning Board members and the public. One member of the public, Eric Berman, a chemical engineer and nearby resident, refuted the information and provided a power point presentation of his argument. Concluding the public testimony portion of the Planning Board meeting and during discussion, one of the Planning Board members suggested that the developer take Mr. Bergman and his dB meter to a water ski lake in Helena and test whether or not the Rosewater developers information is accurate. On May 16, 2013 Mr. Bergman accompanied the applicant (Bill Tanner) to Helena and sound tested an AWSA approved towboat at competition speeds. Mr. Bergman documented his finding in email. (See email; correspondence from Mr. Bergman dated May 20, 2013). The conclusion was that the sound contour map and the AWSA Boat restrictions provided by the applicant (Bill Tanner) are accurate.

Fourth, address neighborhood, the applicant will prohibit the use of motorized personal water craft (jet skis and wave runners), and two-cycle motors. These restrictions will be placed in the Rosewater CC&R's. We would also agree that these restrictions will be a condition of the CUP.

- (3) dust, glare or heat

The proposed water ski use will not generate dust, glare, or heat

- (4) smoke, fumes, gas, or odors

The proposed water ski/wakeboard use will not generate smoke, fumes, gas, or odors.

- (5) inappropriate hours of operation

Hours of operation are dawn to dusk as per the Montana Fish Wildlife and Parks regulations but no earlier than 7:00 am and no later than 10:00 pm.

3. The following proposed uses shall meet additional requirements, known as "Conditional Use Standards" as outlined in Chapter 4 the Flathead County Zoning Regulations and require consultation with a staff planner PRIOR to application submittal:

- 4.01 Animal Hospitals, Kennels, Animal Shelters, Veterinary Clinics
- 4.02 Bed and Breakfast Establishments/Boarding Houses
- 4.03 Camp or Retreat Center
- 4.04 Caretaker's Facility in AG, SAG, and R-1 Districts
- 4.05 Cluster Housing Development in Residential Districts
- 4.06 Commercial Caretaker's Facility in B-2, B-3, I-1, I-1H, and I-2 Districts
- 4.07 Contractors Storage Yard in AG and SAG Districts
- 4.08 Day Care Centers- 13 or More Individuals
- 4.09 Electrical Distribution Stations
- 4.10 Extractive Industries
- 4.11 Family Hardship Dwellings
- 4.12 Manufactured Home Parks
- 4.13 Mini-Storage, Recreational Vehicle Storage
- 4.14 Motor Coach Subdivisions
- 4.15 Recreational Facilities (see also 7.17.040)
- 4.16 Temporary Uses

Consultation with Planner:

Date \_\_\_\_\_ Planner's Signature \_\_\_\_\_



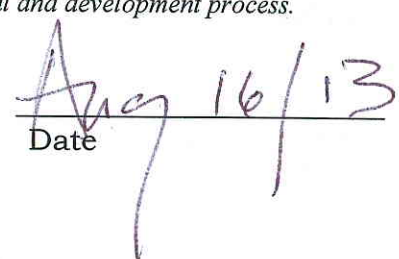
**INSTRUCTIONS FOR CONDITIONAL USE PERMIT APPLICATION:**

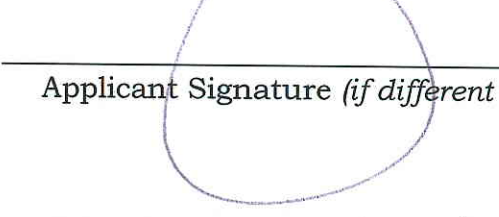
1. Answer all questions. Answers should be clear and contain all the necessary information.
2. In answering question 1, refer to the classification system in the Zoning Regulations.
3. In answering questions 2 and 3, be specific and complete. Please use a separate sheet of paper to discuss the appropriate topics.
4. Copy of plot plan/site plan must be submitted with each application, with all existing or proposed structures shown, and distances from each other and from the property line. *If you are submitting a plan larger than 11x17 in size, please include 7 copies.*
5. A **Certified** Adjoining Property Owners List must be submitted with the application (*see forms below*). The list will be sent directly to the Planning & Zoning office, unless you request otherwise. This list is valid for a period of 6 months from date generated. You may also get a certified adjoining landowners list from a title company if you choose.
  - *(The buffer should be 150 ft. for all areas with the following exceptions: Administrative Conditional Use Permits, standard Conditional Use Permits, and Planned Unit Development (PUD) applications within the Lakeside Zoning District require a 300 ft. buffer.)*

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*I hereby certify under penalty of perjury and the laws of the State of Montana that the information submitted herein, on all other submitted forms, documents, plans or any other information submitted as a part of this application, to be true, complete, and accurate to the best of my knowledge. Should any information or representation submitted in connection with this application be incorrect or untrue, I understand that any approval based thereon may be rescinded and other appropriate action taken. The signing of this application signifies approval for the Flathead County Planning & Zoning staff to be present on the property for routine monitoring and inspection during the approval and development process.*

  
\_\_\_\_\_  
Owner(s) Signature (all owners must sign)

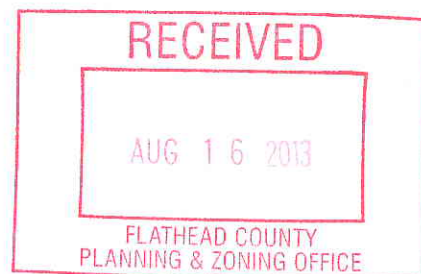
  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Applicant Signature (if different than above)

\_\_\_\_\_  
Date

**Eric H. Mulcahy**

**From:** William Tanner [bill@5starmanagement.us]  
**Sent:** Monday, May 20, 2013 9:30 PM  
**To:** eric@sandssurveying.com  
**Subject:** Fwd: Eric Bergman e-mail



Begin forwarded message:

**From:** Whang\_doodle alpha <[whang\\_doodle@hotmail.com](mailto:whang_doodle@hotmail.com)>  
**Date:** May 20, 2013 7:05:32 PM MDT  
**To:** "[bill@5starmanagement.us](mailto:bill@5starmanagement.us)" <[bill@5starmanagement.us](mailto:bill@5starmanagement.us)>  
**Subject:** FW: Eric Bergman e-mail

Last Thursday, May 16, I went with Bill Tanner and Greg - the hardcore water skiing enthusiast - over to "No Wake Lake" in Helena. This is a private water ski community similar to what is proposed to be built at Rosewater. There are two lakes. The lakes are not connected and they operated independently. You have to own a lot on the lake in order to use it and owning a lot on one lake does not entitle you to use the other lake. Greg owns a lot on one of the lakes. There are only about six houses around the two lakes, so most of the lots are vacant, but the owners can still come and ski.

It is right at a 3 hour drive from Kalispell. We left at 7:30 a.m. from Echo Lake Cafe and were there about 10:00. From just out of Helena they called a young man named Ryan who was going to bring his tournament ski boat to the lake. It was about 11:00 by the time he was there and the boat was in the water. The lake is different from Rosewater in a few respects. It is about 1800 feet long instead of the 2300 feet proposed for Rosewater. At the south end, the lake is pretty much on a level with the surroundings while Rosewater is intended to be in a depression, roughly 4 - 5 feet below the level. The north end of the Helena lakes is diked up pretty good as the setting is on a slight slope. Rosewater is supposed to all be dug in, so you won't have a relatively narrow berm (10 feet at the top and perhaps 30 feet at the bottom) holding the lake in. The Helena lakes do not use a liner and they do not draw water out of the lake for irrigation - there is no outlet, so evaporation is about the only way the lake drops. The water is fairly cloudy/murky so it is brown in color and they don't need or use artificial colorant as there is enough sediment to block light and mostly keep aquatic plants from growing.

The lakes are definitely designed for one specific purpose, and that is competitive water skiing. The slalom course is semi-permanent. While it could be moved, it rarely ever is. There are a series of buoys about 30 feet apart down the center of the lake. These define the course the boat runs - it runs straight all the way through. Outside of these channel marking buoys are the "pylons" around which the skier must maneuver, defining the slalom course. The boats are actually speed controlled by GPS. They program in the



speed for the course -say 34.2 mph, then they hit it and the boat runs at 34.2 mph. Since all skiers use the same boat and it is GPS controlled, obviously this isn't a "race." The competitive factor is that each run through the course is made with a progressively shorter rope. The shorter the rope the less reaction time and the harder the skier has to cut his turns in order to make the slalom course.

While all the skiers typically use tournament supplied boats, they are very fussy about having their own ropes and definitely their own handle for the rope and their own ski. Greg was showing me his carbon fiber ski. So at a tournament it isn't like everyone shows up with their own boat and driver. In fact, it doesn't seem to be a big spectator sport - mostly insiders and family members.

I lined up on the berm about mid-point on the course which would be right at 125 feet from the center of the course where the boat would run. I used my laser range finder to verify distances. All passes were made with a skier being towed. These guys don't like to run a boat just for fun. If the boat is running they want a skier behind it and the ski the slalom course. It is strenuous enough that they would switch off skiers every three or four passes. I probably had them do about a dozen passes total.

Now, I went there with an attitude and a bit of a chip on my shoulder. I expected to prove to them just how loud and obnoxious a non-skier finds their boats to be. The first pass I was on the berm 125 feet from the boat. That would put the boat at the start approximately 900 feet or 300 yards away. I could tell they fired up when the skier came up out of the water and I saw the rooster tail off the ski, but honestly, I didn't hear the boat right away. As it came directly past me, yeah, I could certainly hear it, but it had a very low, mellow rumble which was not really unpleasant. This boat was running a 310 cubic inch V8 with twin exhaust and twin mufflers, the exhaust exiting below the water line at the rear of the boat. I wanted to make sure they weren't dogging it on me as the AWSA (American Water Skiing Association) spec calls for boat noise levels to be limited to 75dB measured at 125 feet with open throttle. Noise measurements always bounce around quite a bit, but the average was definitely right in the 75dB range. Absolute peak was 86dB, but that isn't really a fair test because a single perceived spike can throw everything off. I repeated that on a second run, and again showed right at 75dB.

We backed off to 100 yards. At that point I was showing 60 - 63 dB. While I could hear it, again, it wasn't especially unpleasant though I wouldn't want to listen to it all day. I will emphasize that it was a pretty mellow rumble, not at all like my motorcycle red-lined or the chainsaw running open throttle. That actually fits with every study, showing that the human ear finds these low pitched sounds to be much less unpleasant and the perceived noise level is lower at the longer wave-lengths. At 100 yards, you could definitely detect a momentary increase in volume just as the boat passed by so you were getting the noise directly from the exhaust ports under water at the back of the boat.

At 200 yards I was reading 53 - 57dB. Still noticeable, but relatively quiet, especially against the background ambient noise. There was a helicopter, a couple of airplanes and a couple of barking dogs. We did not make measurements with the added noise sources, but I did take note of them.

At 300 yards - the maximum straight-line distance I could get without crossing over into a newly planted field, the measurements were 53 - 55 dB. Bill Tanner wanted to claim you couldn't hear it without seeing the boat go by. While that wasn't quite true, it wasn't too far

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off. To put the 53 - 55 dB in perspective, that is, in reality, the same readings that I got even without the boat running. At that point we were about a quarter of a mile from the interstate (I think the speed limit due to construction was 45 mph) so even without the boats we were showing 53 - 55 dB. That doesn't mean that I couldn't hear the boat. I could (barely) but only if I was listening for it. Basically it was lost against the background of the road noise.

Back at the lake, on the far side of the second lake, 215 yards away, a guy was on a riding mower. I registered him at 53 - 55 dB, but to the human ear, the mower was far more noticeable than the boat was - even at 200 yards.

I went out on the boat after that. I didn't take the decibel meter, but there is no spec for right on the boat anyway. What I can tell you is that it was surprisingly quiet. Maybe quiet isn't the right word. Put it this way, I was surprised it wasn't a lot louder. You actually could converse easily without raising your voice.

So all this took about an hour, 11:00 - 12:00 a.m. with an air temperature of about 55F and wind running 5 - 10 mph.

Bottom line, is that about 95% of my concerns about the noise level at my place have been relieved, but I am ~600 yards away. I do believe I will still be able to hear the boats, but I will have to pay attention to do it. I expect traffic noise from Whitefish Stage to overwhelm the boat noise. For people living closer, it will be more of an issue, but my impression is that the impact will be very minimal. I can't tell anyone else what noise level they are going to have to find "acceptable," and people living closer will have a bit more of an issue. At 200 yards the noise I registered was relatively minor. By 300 yards I have a hard time saying I would be concerned if that was what I was hearing.

As I commented to them, from a NOISE perspective, let's face it, we don't care if they run a jet engine over there so long as we never hear it. That's where conditions on the conditional use can be a challenge. We want to have reasonable conditions, but as long as we never hear the boats, we don't care if they follow the conditions or not. For example, if operating hours are during daylight only, we really don't care if they have a party at midnight if we never hear it because we won't even know about it.

I will again emphasize that I was really impressed. I expected to hear more noise, measure more noise and be more irritated by the noise. I wish I'd have made the trip over there six weeks ago. I wouldn't have lost nearly as much sleep as I have and wasted as much time reading noise studies, studying boats, etc. I was little short of amazed at the performance of those boats and how quiet they were at any significant distance. Now - will this impact people like Mark Lister more than me? Certainly. But by 200 yards I think the sound level is fairly minimal. Recess the lakes a few feet down, it will help. Populate the shore with houses, that will help. Trees will help. I think we will still hear it (from where I am at, I think I will REALLY have to concentrate - though I do have a fold in the hills which could funnel noise to me), but I am no longer losing sleep over it, I just want to have conditions in place so we don't find the environment suddenly changing 3 years from now.

Eric

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William Tanner  
688 Echo Lake Rd.  
Bigfork, MT 59911  
Cell 406-250-4482  
Fax 406-837-6928  
[bill@5starmanagement.us](mailto:bill@5starmanagement.us)

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5/22/2013